



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 12, 1998

Mr. Ronald Rodriguez
Assistant City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540-1079

OR98-2410

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118735.

The City of Edinburg ("city") received a request for the Civil Service Commission's ("commission") tape recordings of witness testimony, arguments, briefs, and deliberations concerning the requestor's hearing before the commission. You indicate that you will release some of the requested information. You argue that you may withhold "the tapes, transcriptions or other matters related to any closed session deliberations." You argue that this material is excepted from disclosure by sections 552.101, 552.103, and 552.107 of the Government Code. You seek to withhold three tapes which were recorded during the commission's executive session.

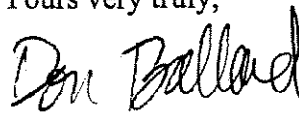
You explain that the commission conducted an appeal hearing after the requestor's indefinite suspension from the city's police force. Local Gov't § 143.053(b). Section 143.010(d) of the Local Government Code provides that "[a]ll such [appeal] proceedings shall be public." The commission is required to maintain "a public record of each proceeding with copies available at cost." Local Gov't Code § 143.010(h). The commission is, however, authorized to deliberate its decision concerning a suspension appeal in a closed session. "The commission may deliberate the decision [of suspension] in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session." Local Gov't Code § 143.053(d); *cf.* Gov't Code §§ 551.001(1) (defining "closed session"), (d) (defining "deliberation"). Furthermore, the Open Meetings Act allows a governmental body to conduct an executive session when deliberating the discipline of a public officer or employee. Gov't Code § 551.074.

You argue that "matters" related to the executive session must be withheld. Section 551.104(c) of the Government Code states that a "certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order." Thus, we believe that some of the commission's tape recordings must not be disclosed unless a court rules otherwise in an action filed under the Open Meetings Act. Gov't Code § 551.104; Open Records Decision No. 495 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions). In a suspension appeal, the commission may deliberate in a closed session for a single, limited purpose. The commission may only conduct a closed session to deliberate its suspension appeal decision. Consequently, those portions of the executive or closed session tape recordings which reflect the commission's deliberation about its decision must be withheld. Local Gov't Code § 143.053(d). Those matters on the tapes not reflecting the commission's deliberation of the suspension decision may not be withheld. Local Gov't Code § 143.010(d), (h); *see* Open Records Decision No. 525 (1989) (The Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes.).

It appears in this case, that the requestor only seeks the tape recordings of the proceeding, including taped witness testimony, arguments, briefs, and deliberations. The portion of the recordings reflecting the commission's closed suspension decision deliberation may be withheld. Gov't Code § 551.104; Local Gov't Code § 143.053(d). The recordings reflecting witness testimony, arguments, briefs and any other material not reflecting the commission's suspension decision deliberation may not be withheld. Local Gov't Code § 143.010(d), (h). Thus, we find that the city must release a taped copy of the hearing's proceedings with the exception of the commission's executive session deliberation about its decision.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118735

Enclosures: Submitted Information

cc: Mr. Raul Garcia
2009 Norma Lane
Edinburg, Texas 78539
(w/o enclosures)